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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF

VIRGINIA ELECTRIC AND POWER COMPANY

CASE NO. PUE-2015-00107

For approval and certification of electric transmission
Facilities: Haymarket 230 kV Double Circuit
Transmission Line and 230-34.5 kV Haymarket Substation

PETITION FOR REHEARING OR RECONSIDERATION

COMES NOW, Somerset Crossing Homeowners Association (“Somerset” or “Association”), by and through counsel, and respectfully presents this Petition for Rehearing or Reconsideration of the Interim Order of the State Corporation Commission (“Commission”) dated June 23, 2017 (“Order”).

SUMMARY OF ARGUMENT

The Commission should reconsider its Final Order permitting Dominion Virginia Power (“Dominion”), within sixty (60) days of the date of the order granting a certificate of public convenience and necessity to construct and operate the proposed Haymarket 230 kilovolt (“kv”) double circuit transmission line and 230-34.5 kv Haymarket Substation (“Project”) pursuant to Code of Virginia (“Code”) Section 56-46.1 and the Utility Facilities Act, VA Code Section 56-265.1 et. seq. along the proposed Carver Road route, or, in the alternative, order a rehearing, for the following reasons: (1) the Order contravenes Virginia statutory and constitutional law to the extent it authorizes the taking of private property when the Commission has found that the “need” for the Transmission Line is driven by a single retail customer; and, (2) the Order is contrary to

the evidence presented to the Hearing Examiner including the recommendations and testimony of the Commission's own staff.

ARGUMENT

I. THE ORDER CONTRAVENES VIRGINIA STATUTORY AND CONSTITUTIONAL LAW TO THE EXTENT IT AUTHORIZES THE TAKING OF PRIVATE PROPERTY WHEN THE COMMISSION HAS FOUND THAT THE "NEED" FOR THE TRANSMISSION LINE IS DRIVEN BY A SINGLE RETAIL CUSTOMER

The Commission cannot approve Dominion's application in the absence of a finding that there is a clear need for the Transmission Line. VA Code § 56-265.2A provides that "it shall be unlawful for any public utility to construct . . . facilities for use in public utility service ... without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege." Additionally, VA Code § 56-46.1 provides, in part, that: "As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned. . . ." The question in this case is whether there is a need.

The question of need has not been adequately addressed by the Commission in the context of the facts and circumstances of this case. All parties, including the Commission itself, recognize that this application is driven by the need of a single retail customer that has entered into a private contract with Dominion for the construction of the Transmission Line.¹ Yet, in issuing the Order, the Commission simply made a conclusory determination of need without engaging in any analysis of the multitude of evidence before the Commission that Dominion has failed to demonstrate a need for this Transmission Line in accordance with the requirements of Virginia

¹ Interim Order at p. 10.

law.

Indeed, a careful review of the record reflects that there is insufficient evidence to establish a need for the new proposed 230 kV double circuit Transmission Line and Haymarket substation. It is clear from the Application and the evidence in the record that the sole purpose of the proposed Transmission Line is to provide service to a single end-user, referred to in the Application as the “Customer.”² This raises a legitimate question as to whether there is a need for the construction of any of the proposed routes to provide service to the existing customer base and the anticipated customer base that is consistent with Prince William County’s long term land use plan or whether the entire Application is about the need of one private customer.

This is not a case where the need for the Transmission Line exists due to the progress and growth of development within Prince William County. Indeed, Dominion has admitted to representatives of the Association and representatives of Prince William County that, but for the third-party contract, Dominion would not have proposed this Transmission Line. Instead, Dominion has submitted the Application based solely on its obligation to fulfill a private contractual obligation to a third-party. In that regard, this is not a situation where Dominion is submitting an application to satisfy a need. Instead, Dominion acted on its own to enter into a for-profit contract to artificially create the alleged need for the proposed Transmission Line. In doing so, Dominion has not acted as a public utility, but instead as a private speculator.

Indeed, during a June 1, 2017 Special Meeting of the Prince William County Board of Supervisors, that Board considered the question of imminent need for the Project.³ At that time, the Prince William County Board of Supervisors discussed that the end user of the proposed Transmission

² Application, p. 2; Application Appendix, DEQ Supplement, Direct Testimony and Exhibits of Virginia Electric and Power Company, p. 2; and Appendix to Application, p. 1.

³ Koma, Alex (2017, June 2). Supervisors reject both routes for power lines at Haymarket data center. *InsideNova*.

Line will use approximately 97 percent of the power that the proposed substation will produce and deliver through the Transmission Line.⁴ Additionally, information discussed at that meeting and subsequent news reports reflect that two of the three buildings proposed to be constructed by the end user can function without the construction of the proposed substation or Transmission Line.⁵ Indeed, news reports from this Meeting reflect that Supervisor Peter Candland noted that the initial filings by Dominion reflected that there is an urgent need for the Project that is not, in fact present.⁶ He stated: “It seems someone was either wrong, or has been deceptive here.”⁷ The evidence discussed during this meeting of the Prince William County Board of Supervisors was not before the Commission at the time it issued its final Order, and certainly is relevant to the ultimate question of need.

Indeed, the Commission’s own staff recognized that the proposed Transmission Line’s construction to serve a single customer’s projected load raises doubt that there is a need for the Transmission Line that is in the public interest⁸. In its comments, the Commission’s Staff recognized that: “Even when load for a single customer does materialize, retail customers still bear a disproportionate share of the environmental and construction costs associated with the necessary transmission line, while one customer enjoys the benefits⁹.” Additionally, during its opening statements at the evidentiary hearing, the Commission’s staff stated that: “what this case boils down to” is: “[C]an a retail customer, currently receiving perfectly adequate service at distribution levels, demand an increase in its service so significant that it requires construction of new transmission facilities without incurring any financial responsibility for its request?”¹⁰ It is clear that the Commission Staff found that the only reason for the subject application is due to one single retail

⁴ Id.
⁵ Id.
⁶ Id.
⁷ Id.
⁸ See Staff Comments Dated December 6, 2016 at p. 3.
⁹ Id.
¹⁰ Hwy. Tr. 102:3 – P.

customer's dramatic increase in electricity use, and a private contract between Dominion and that retail customer to address that increase in electricity use.

The Application itself establishes that the alleged "need" only exists due to a private agreement between Dominion and a third party. Dominion states that Line #124 is currently being operated at 115 kV.¹¹ Dominion states that the Customer requires a load of 120 MVA.¹² Dominion states that once the proposed Project is complete, the total load of Line #124, at full buildout of the Customer's campus, will be 160 MVA.¹³ In other words, Line #124 is perfectly adequate for the current load and indeed, all anticipated future development, if such future development does not include Customer's data center that eats up the entire load.¹⁴

In responding to the Staff's discovery questions regarding necessity, Dominion failed to provide clear or adequate answers to establish the need for the Transmission Line. For instance, Staff's First Set of Discovery, Interrogatory No. 13 asks: "Would NERC or PJM requirements prohibit the Company from amending its Transmission Planning Criteria to create a different load limit for radial transmission lines that are need for a line extension to serve a single customer, such as a data center?" In other words, why are these load limit "standards" in place and is it because it will maximize Dominion's profits or, in the alternative, because there is a federally-mandated requirement for them to be in place? Dominion's response was revealing. The response indicated that there is no reason Dominion cannot change its load requirements, except that Dominion believes "that making an exception based entirely on the type of customer (i.e., data centers) or number of customers that make up the 100+ MW load *could* ultimately reduce reliability and negatively impact economic

¹¹ Application, p. 2.

¹² Application, p. 2.

¹³ Application, p. 2.

¹⁴ It should be noted that there is data center customer already being served by Line #124 whose demand is 19.5. See, Dominion's responses to Staff's First Set Discovery, Interrogatory No. 12.

development, as well as *could be* inconsistent with the Company's responsibility to provide non-discriminatory service."¹⁵ (emphasis added). Dominion bears the burden to demonstrate the need for this Project. That the Project "could be" necessary is simply insufficient. Dominion has submitted no evidence that the proposed 230 kV double circuit Transmission Line is necessary to meet its obligation as a public utility to provide electricity service to customers located in and around the proposed routes. Dominion simply speculates that it *might* require additional service in the future to meet the needs of future economic development. On this point, the Commission's own staff raised legitimate concerns regarding whether there was evidence of an actual need given the lack of certainty of future economic development. In its Brief, the Staff stated: "while DVP is confident that the single Customer's load will be developed as scheduled, Staff is aware (as is the Company) of at least two recent cases in which a transmission line was built for one customer's projected load, but that load failed to materialize."¹⁶ This concern was present as early as July 2015, when representatives from DVP advised the President of Somerset that there would be no immediate need for the Project but for the single customer behind the subject application.

Similarly, Staff's First Set of Discovery, Interrogatory No. 6 requests, "[p]lease provide the Company's basis for upgrading Line #124 from 115 kV to 230 kV." Dominion's response does not focus on any actual need for the Transmission Line but rather provides a basis for why it believes that Dominion is entitled to receive an upgrade of its infrastructure: "Converting Line #124 from 115 kV

¹⁵ Dominion responses to Staff's First Set Discovery Interrogatory No. 13.

¹⁶ See Staff Brief at p. 15-17; see Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power, For approval and certification of electric transmission facilities in Prince William County and the City of Manassas: Cannon Branch-Cloverhill 230 kV Transmission Line and Cloverhill Substation, Case No, PUE-2011-0001 1,2017 S.C.C. Ann. Rept. 428, Final Order (Dec. 21, 2011) (this project was constructed but as of November 2015, the loads anticipated for this project, Unicom "planned data center campus[]," had not been realized); Application of Virginia Electric and Power Company d/b/a Dominion Virginia Power for approval and certification of electric facilities: Waxpool 230 kV Double Circuit Transmission Line, Brambleton- BECO 230 kV Transmission Line and 2i0-34.5 kV Waxpool Substation, Case No. PUE-2011-00129, 2012 S.C.C. Ann. Rept, 353, Final Order (Dec. 28, 2012) (this project was also constructed but as of November 2015 the loads anticipated for this project, Integrate Ashburn I LLC's "planned data center campus[]," had not been realized).

to 230 kV is consistent with the Company's practice of using 230 kV to support demand growth in northern Virginia." Dominion goes on to cite several cases wherein its "upgrade approach" has been approved in multiple transmission projects. Not one of those projects involved an upgrade to provide power to a single customer, without real evidence of additional necessity. See Case Nos. PUE-2009-00134 (replacing a deteriorating line), PUE-2011-00011 (building a new 230 kV line, but with no objections as to necessity), PUE-2012-0065 (inapplicable case because not an application to construct transmission lines but rather a transfer of transmission line assets to WMATA), PUE-2014-00025 (the need for the transmission solution was unchallenged).

Moreover, the Army Corp of Engineers ("ACE"), which has separate jurisdiction over aspects of construction of the Project and the facilities to be constructed by Dominion's customer, has stated that it appears that Dominion's customer is driving this Project, rather than a current need to provide electrical service to serve the load required by existing customers.¹⁷ Indeed, Tom Walker, the Chief of the ACE's regulatory branch, has stated that the ACE will need to undergo federal review if it concludes that the evidence substantiates a finding that the data center to be constructed by Dominion's customer is driving this Project.¹⁸

Accordingly, the Application is dependent upon a false assumption that it can meet the requisite need to permit the approval of the construction of a high voltage transmission line by creating the need itself, rather than in satisfying the need of existing energy consumers. It is notable that this case is lacking in any engineering analysis demonstrating that a need for additional infrastructure currently exists. There is no evidence that Dominion's transmission system has been stress-evaluated under federal and Virginia regulatory requirements or that there has been a significant volume of

¹⁷ Koma, Alex (2017, June 1). Amazon data center, Dominion power line under federal scrutiny. *InsideNova*.

¹⁸ Id.

transmission system overloads due to an overstressed transmission system.¹⁹ Simply put, there is no evidence that the proposed Transmission Line is necessary to permit Prince William County to continue to have reliable electric service. Dominion has attempted to establish the “need” for the line by entering into a private, third-party agreement to construct a Transmission Line that is: (1) unnecessary to meet anticipated growth; (2) is not required to address a condition of overstress; and, (3) is in direct conflict with the public priorities as established by the local governments. It is unconscionable for the Commission to find that a need exists in this case where the alleged need would permit Dominion to take private property, damage the environment and irrevocably reduce the value of hundreds of homes, solely for the benefit of Dominion’s profit margins. In this regard, the Final Order treads on dangerous ground. Any approval of the Transmission Line will result in a need for Dominion to take private land through eminent domain. In that regard, Article I, Section 11 of the Virginia Constitution states, in part:

That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be damaged or taken except for public use. . . . No more private property may be taken than necessary to achieve the stated public use. . . . A public service company, public service corporation, or railroad exercises the power of eminent domain for public use when such exercise is for the authorized provision of utility, common carrier, or railroad services. In all other cases, a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development, except for the elimination of a public nuisance existing on the property. The condemner bears the burden of proving that the use is public, without a presumption that it is.

The Commission has issued a Final Order for a transmission route running through private property solely for the purpose of private gain, private benefit, private enterprise, increasing jobs, increasing

¹⁹ In contrast, in *Application of Virginia Electric and Power Company D/B/A Dominion Virginia Power*, (Case No. PUE-2012-00029, 2013 Va. PUC LEXIS 874 (November 26, 2013), the Commission based its ruling on the fact that Dominion had been able to establish need based on engineering studies establishing that the existing transmission system was over-stressed, thus creating overloads where a loss of electric service was to be expected.

tax revenue, or economic development. This Final Order violates Article I, Section 11 of the Virginia Constitution because it permits a public utility to take private land for the primary purpose of providing utility services to a single private retail customer when the justification for such a take is primarily to facilitate such private retail user's private enterprise and economic development.

II. THE ORDER IS CONTRARY TO THE EVIDENCE PRESENTED TO THE HEARING EXAMINER INCLUDING THE RECOMMENDATIONS AND TESTIMONY OF THE COMMISSION'S OWN STAFF

The evidence before the Commission established that the alternative Carver Road Route ("Carver Road Route") would have significant adverse impacts on the scenic assets, historic districts, and environment of the area concerned relative to other routes under consideration (especially the I-66 Overhead and I-66 Hybrid routes). The evidence before the Commission did not support the benefits that the Commission assigned to the Carver Road Route (i.e. lower impact on local residences and cost savings). Consequently, based on the evidence before the Commission, the Commission erred in determining that the Carver Road Route meets the relevant statutory criteria and were in the public interest.

A. IN ORDER TO APPROVE AN ELECTRICAL TRANSMISSION LINE ROUTE THE COMMISSION MUST DETERMINE THAT THE ROUTE IS IN THE PUBLIC INTEREST BASED ON MULTIPLE FACTORS

Va. Code §§ 56-46.1 and 56-265.2(B) establish the statutory criteria that the Commission must apply when approving an electrical transmission line route. Va. Code § 56-265.2(B) provides in relevant part that:

In exercising its authority under this section, the Commission . . . may permit the construction and operation of electrical generating facilities . . . upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are not otherwise contrary to the public interest.

In 1971, the citizens of the Commonwealth of Virginia approved the adoption of Virginia Constitution, Article XI, Section I recognizing the policy of the Commonwealth to: “conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings . . . to protect its atmosphere, lands, and waters from pollution, impairment, or destruction. . .” In apparent recognition of this public mandate, the following year, the General Assembly enacted Va. Code § 56-46.1(B). See Bd. of Sup'rs of Campbell Cty. v. Appalachian Power Co., 216 Va. 93, 99–100 (1975). Va. Code § 56-46.1(B) creates an absolute requirement that:

As a condition to approval the Commission shall determine that the line is needed and that the corridor or route the line is to follow will reasonably minimize adverse impact on the scenic assets, historic districts and environment of the area concerned.

Reasonable minimization of adverse impacts is determined through weighing multiple factors. BASF Corp. v. State Corp. Com'n, 289 Va. 375, 400-01 (2015). This multifactorial balancing test requires the Commission to “balance” adverse impacts along with other “factors” and “traditional considerations.” Ultimately, the Commission must decide within the parameters of the statute what best serves the “total public interest.” Bd. of Sup'rs of Campbell Cty. v. Appalachian Power Co., 216 Va. 93, 100 (1975).

B. THE EVIDENCE BEFORE THE COMMISSION FAILED TO ESTABLISH THAT THE CARVER ROAD ROUTE WILL HAVE LESS IMPACT ON LOCAL RESIDENCES OR ACHIEVE COST SAVINGS RELATIVE TO OTHER ROUTES

The finding by the Commission that the Carver Road Route poses fewer relative impacts on local residences and enjoyed cost benefits over other routes was not supported by the evidence before the Commission. The Commission’s determination that the Carver Road Route is an acceptable route depends on such findings.²⁰

²⁰ Interim Order, p. 12 – 13.

Determination of a route's impact on local residences requires consideration of both a route's quantitative and qualitative impacts. Respectfully, the Commission erred by solely considering select quantitative evidence and ignoring the overwhelming qualitative evidence in assessing the impact on local residences of the Carver Road Route.²¹ The quantitative evidence before the Commission was not conclusive.²² Indeed, while the Final Order states that the Commission's "finding does not mean there will be no visual impact," the Final Order reflects a disregard for the nature and extent of such visual impacts as they will be felt along the various proposed routes. Moreover, the Carver Road Route crosses larger numbers of privately owned parcels than either the I-66 Overhead Route or I-66 Hybrid Route.²³ However, the impact of the proposed routes cannot be determined solely by looking at the numbers. The qualitative evidence of disproportionate impact to local residences affected by the Carver Road Route was overwhelming. The Carver Road Route impacts communities (i) designed around nature trails and preserves, (ii) with no foreseeable expectation that electrical transmission corridors would ever be sited in their vicinity, and (iii) where extensive governmental takings relative to the other routes would be required.²⁴ The Carver Road Route would radically alter the nature the communities it will affect. The communities affected by the Carver Road Route are desirable because of their greenspace and distance from industrial development.

²¹ Interim Order at, p. 12-13 (supporting findings of impact on local residence based on number of single-family homes and condominium / structures located within 200 ft and 500 ft of the route's ROW centerline).

(...the Carver Road Route has the

²² The Commission's findings appear to be based on the number of "single-family residences," "townhome / condominium structures" and "apartment buildings" within 100, 200, and 500 feet of a route's ROW centerline. These metrics come directly from Dominion's Application. See Application at p. 71 -72. However, the descriptions "townhome / condominium structures" and "apartment buildings" appear to count structures rather than dwelling units. Consequently, Dominion's numbers do not demonstrate how many dwelling units or households will be affected by the routes making it impossible for the Commission to reach any conclusive finding regarding the quantitative impact on local residences.

²³ Application, p. 71-72 (I-66 Overhead Route crosses 36 private parcels; I-66 Hybrid Route crosses 35 private parcels, Carver Road Route crosses 75 parcels, and Railroad Route crosses 43 parcels).

²⁴ Pre-filed Testimony of Somerset Crossing HOA, p. 15-17; Pre-Filed Testimony of McCoy, 15:3-4.

Locating the proposed electrical lines through these communities would also disproportionately negatively impact property values. Somerset provided an impact of 3-10% on the median tax assessed value of homes in its community (an aggregate financial impact ranging between \$7,074,000 and \$23,580,000) if a route passing through its community was selected.²⁵ Significantly, Dominion cites research that suggests that "all markets do not react in the same way to HVTL proximity."²⁶ Although communities along the Carver Road Route, and the I-66 routes are arguably in the same general market, the characteristics of the two submarkets could not be more different. The I-66 routes under consideration impact communities located along existing right of ways ("ROW") that contain power lines, telephone lines, noise attenuation walls and other structures of a public nature.²⁷ Indeed, 90% of the I-66 Overhead Route is collocated along existing ROW and 94% of the I-66 Hybrid Route is collocated along existing ROW.²⁸ Future infrastructure development along the I-66 coordinator has been reasonable foreseeable.²⁹ Moreover, neither the I-66 Overhead Route nor the I-66 Hybrid Route will radically alter the existing nature of the communities they affect. Consequently, even if the I-66 Overhead Route or the I-66 Hybrid Route impact numerically more residences, the extent and nature of these impacts on affected residence are less significant than the impacts of the Carver Road Route. The Carver Road Route's greater adverse qualitative impacts on local residences outweigh the debatable quantitative impacts of the I-66 Overhead and I-66 Hybrid routes. Consequently, the Commissions' findings related to relative impact on local residences lacked a basis in the evidence.

²⁵ Hrg. Tr. 98:21-25.

²⁶ Lenhoff Rebuttal Testimony, 5:11-12.

²⁷ Pre-filed Testimony of Somerset, p. 15-17.

²⁸ Pre-filed Testimony of McCoy, 10:11-13 & 13:5-6.

²⁹ Id.

The Commission's justification of its selection of the Carver Road Route on the basis of cost is also contrary to the evidence before the Commission. The evidence before the Commission established the following estimated costs for the five routes under consideration:

Cost Breakdowns for Routes ³⁰					
	I-66 Overhead (Proposed)	I-66 Hybrid	Carver	Madison	Railroad
Total Costs	\$51 million	\$166.7 million	\$61.9 million	\$67.8 million	\$55.1 million

Based on the evidence before the Commission, the Carver Road Route is not the least costly route. The estimated cost of the I-66 Overhead Route was \$10.9 million less than the Carver Road Route. Consequently, the Commission erroneously depended on the factor of cost to support its selection of the Carver Road Route over the I-66 Overhead Route.

Additionally, the Final Order contemplates alternative routes depending upon Prince William County's response to Dominion's request for additional easements necessary for the power line to follow the proposed route. Given that the status of the easement request remains unknown, it is Somerset's position that this information must be before the Commission prior to any decision being made upon the appropriate route. It is premature for the Commission to approve the routes and any variances before Prince William County makes a decision on Dominion's easement request. The parties are entitled to address this evidence as a part of hearing to allow for proper consideration of the evidence by all parties.

Consequently, the totality of the evidentiary record before the Commission failed to demonstrate that either the Carver Road Route would have less of an impact on local residences or achieve cost savings when compared to other routes (especially the I-66 Overhead Route). Instead, the Commission rendered its decision in spite of the evidence of record and, at least partially, based on information that is not of record.

³⁰ Joshipura Pre-Filed Testimony, p. 16.

C. THE CARVER ROAD ROUTE DOES NOT REASONABLY MINIMIZE ADVERSE IMPACT ON THE SCENIC ASSETS, HISTORIC DISTRICTS, AND ENVIRONMENT OF THE AREA CONCERNED

The evidence before the Commission conclusively established that the Carver Road Route pose a far greater adverse impact on the scenic assets, historic districts, and environment of the area concerned (especially when compared to the I-66 Overhead and I-66 Hybrid routes).

1. ADVERSE IMPACT ON THE ENVIRONMENT

Relative to the other routes under consideration (including the I-66 Hybrid and I-66 Overhead routes) the Carver Road Route poses significant adverse environmental impacts. Dominion’s analysis indicated that the routes under consideration would have the following land use impacts:

Land Use Impacts of Routes ³¹					
	I-66 Overhead (Proposed)	I-66 Hybrid	Carver	Madison	Railroad
Privately Owned Parcels (#)	36	35	75	75	43
Forested Land (miles)	1.4	1.6	3.8	4.4	2.9
Developed Land (miles)	3.4	3.5	2.8	3.4	2.6
Cropland (miles)	0.2	0.1	0.1	0.3	0.1
Open Land (miles)	0.1	0.1	0.1	0.1	0.1
Wetlands (acres)	5.9	5.1	11.5	11.3	20.8
Forested Wetlands (acres)	3.9	3.6	8.3	7.8	18.9
Battlefield Study Area (miles)	3.1	3.3	4.2	4.9	4.2
Potential NRHP Area (miles)	1.0	1.1	1.7	2.5	1.6
Battlefield Core Area (miles)	0.4	0.4	0.5	0.5	0.7

All institutional stakeholders recognize that the significant adverse environmental impacts of the Carver Road Route outweigh their benefits relative to the other routes. The Virginia Department of Environmental Quality (“DEQ”) recommended either the I-66 Hybrid Route as having the lowest probability of damaging wetlands or the I-66 Overhead Route as having a significantly lower probability of damaging wetlands than the alternative routes.³² Even Dominion now maintains that the adverse impacts of the Carver Road Route (including its environmental impacts) outweigh its

³¹ Data from Application, p. 71-72.
³² DEQ Letter of November 30, 2015.

benefits.³³ Indeed, the environmental concerns created by this Project are so substantial that the Army Corp of Engineers is currently undertaking an independent review of the potential environmental impacts that may arise from the construction of the proposed powerline, substation and data center to be constructed by Dominion’s customer.³⁴ In short, the overwhelming weight of the evidence before the Commission including the testimony and recommendations of its own staff support the conclusion that the Carver Road Route will have far greater detrimental impacts upon the environment than either the I-66 Overhead Route or I-66 Hybrid Route. Additionally, given that the Army Corp of Engineers is engaged in an independent review of the potential environmental impacts that may arise from the construction of the proposed powerline, substation and data center to be constructed by Dominion’s customer, any decision by the Commission to issue an Order approving the subject application is premature and requires a rehearing after the ACE completes its review to allow the parties to fully vet and address any concerns that may be raised by the ACE.

2. ADVERSE IMPACT ON SCENIC AND HISTORIC DISTRICTS

The evidence before the Commission established that both the Carver Road Route will have significantly greater adverse impacts on historic districts than other proposed routes (especially the I-66 Hybrid and I-66 Overhead routes). The project itself is located in one of the most historically significant areas of the United States due to its central role in the American Civil War. Indeed, the Manassas National Battlefield Park will be impacted by the project. The Carver Road Route will have a substantially greater impact on historic battlefield areas than either of the I-66 Routes. The Carver Road Route will impact 4.2 miles of battlefield study area, of which 1.7 miles is in potential National Register of Historic Places (“NRHP”) area and 0.5 miles is battlefield core area.³⁵ The Carver Road

³³ Dominion’s Comments to the Hearing Examiner’s Report of December 6, 2016, p. 22.
³⁴ Koma, Alex (2017, June 1). Amazon data center, Dominion power line under federal scrutiny. *InsideNova*.
³⁵ Dominion Application, p. 71-72.

Route will impact 21% more battlefield study area than the I-66 Hybrid Route and 35% more battlefield study area than the I-66 Overhead Route.³⁶

The Virginia Department of Historic Resources (“DHR”) found that the Carver Road Route will have moderate impact (considered to be an adverse impact for which mitigation is requested) on two (2) historic resources and minimal impacts on four (4) historic resources.³⁷ The Route threatens moderate impacts to the “Buckland Mills Battlefield” and the “Second Battle of Manassas.”³⁸ In contrast, the I-66 Hybrid Route poses moderate impacts to only one historic resource.³⁹ Consequently, DHR concluded that the I-66 Hybrid Route posed the least potential impact on historic resources.

In evaluating the project, Prince William County noted that three historic battlefields would be affected by the project including the Buckland Mills Battlefield, the Thoroughfare Gap Battlefield, and the Manassas Station Operations Battlefield.⁴⁰ Prince William County urged the use of underground transmission lines to the greatest extent possible to mitigate the adverse impact on these and other important cultural resources.⁴¹ Consequently, Prince William County additionally urged the selection of the I-66 Hybrid Route and concluded that all other routes (including Carver Road Route) posed “unacceptable” negative impacts to the County’s cultural resources and to existing and planned communities and businesses.⁴²

Moreover, recent statements from the Advisory Council on Historic Preservation (“ACHP”) reflect a concern that the environmental impacts of the Project, along with its impact upon existing historical sites, requires a more expansive review.⁴³ Indeed, the ACHP wrote a letter to the Army Corp

³⁶ Id. (The I-66 Overhead Route will impact 3.1 miles of Battlefield Study Area and the I-66 Hybrid Route will impact 3.3 miles of Battlefield Study Area).

³⁷ McCoy Pre-filed Testimony (DHR Letter of December 15, 2015, p.1-3).

³⁸ McCoy Pre-filed Testimony (DHR Letter of December 15, 2015, attachments 1 & 5).

³⁹ McCoy Pre-filed Testimony (DHR Letter of December 15, 2015, attachment 2).

⁴⁰ McCoy Pre-filed Testimony (Prince William County Letter of December 17, 2015, p. 1).

⁴¹ McCoy Pre-filed Testimony (Prince William County Letter of December 17, 2015, p. 1).

⁴² McCoy Pre-filed Testimony (Prince William County Letter of December 17, 2015, p. 2).

⁴³ Koma, Alex (2017, June 1). Amazon data center, Dominion power line under federal scrutiny. *InsideNova*.

of Engineers on May 17, 2017, strongly urging the ACE to conduct a more expansive review of the Project.⁴⁴ ACE expressed concern that the Project will create unacceptable adverse impacts upon the nearby Buckland Mills Battlefield.⁴⁵ In that regard, Tom Walker of the ACE has expressed that the ACE is reviewing concerns regarding the adverse impact that the Project will have on the Buckland Historic District, which includes both the battlefield site and buildings dating from 1798.⁴⁶ It is important to note that none of this evidence has been presented to the Commission, or otherwise provided to the parties for consideration within this proceeding.

In conclusion, the complete evidentiary record before the Commission failed to establish that the Carver Road Route would have less of an impact on local residences or achieve cost savings when compared to other routes (especially the I-66 Overhead Route). The evidence before the Commission further established that the Carver Road Route will have a significantly greater adverse impact on historic districts than other proposed routes (especially the I-66 Hybrid and I-66 Overhead routes). Additionally, there is substantial, relevant evidence that has not been presented before the Commission that provides substantial support that the Carver Road Route will have a significantly greater adverse impact on historic districts and the environment than other proposed routes. Consequently, the findings made by the Commission in support of its determination that the Carver Road Route best meets the statutory criteria of Va. Code §§ 56-46.1 and 56-265.2(B) is contrary to the evidence.

CONCLUSION

In summary, the evidence in the record does not support the Interim Order's finding of need. The two routes selected in the Interim Order have a greater adverse impact on the environment and

⁴⁴ Id.

⁴⁵ Id.

⁴⁶ Id.

historical resources than either of the I-66 routes, and are more expensive than the I-66 Overhead Route, which is the first choice of the applicant and recommended by the Commission's own staff. Accordingly, it is clear that the Hearing Examiner's Report impermissibly deviates from the requirements of VA Code §§ 56-265.2 & 56-46.1. Additionally, the evidence in the record fails to demonstrate that there is a need for the Transmission Line. In the absence of need, Dominion will not have the authority to use the Carver Road Route, and any attempt to do so will violate both the Virginia Code and Virginia Constitution. Accordingly, the Commission must grant Somerset's Petition for Rehearing or Reconsideration.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

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